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Law

RECORDS OF TRIAL

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This manual implements Air Force Policy Directive (AFPD) 51-2, *Administration of Military Justice*. It provides guidance on preparing Records of Trial (ROT), Article 32 reports of investigation, and other proceedings under the Manual for Courts-Martial and guidance to court reporters on performing their duties. It must be read in conjunction with the Manual for Courts-Martial (MCM), United States, (1998 Edition). In particular, users should become familiar with Rules for Courts-Martial (RCM) 1103, 1104, and 1305; MCM Appendices 8, 13, 14 and 15; and AFI 51-201, *Administration of Military Justice*. This manual requires collection and maintenance of information protected by the Privacy Act of 1974 authorized by Title 10, United States Code, Section 854. System of records notice F051 AF JA F, Courts-Martial and Article 15 Records, applies. Maintain and dispose of records created as a result of processes prescribed in this publication in accordance with AFMAN 37-139, *Records Disposition Schedule*.

SUMMARY OF REVISIONS

This document is substantially revised and must be completely reviewed.

This revision incorporates numerous changes required as a result of the 1998 revisions to Appendix 14 of the MCM. These include significant ROT format changes, including the use of bold print for certain names in the transcript (paragraph 1.4.); double spacing text in transcripts and inserting page breaks for each session of court (paragraph 1.5.); new justification and indenting formats (paragraph 1.6.); and new guidance on assembling ROTs (Figure 4.1). Other significant changes include authorizing digital cameras for photographs (paragraph 1.10.4.); providing guidance for making exhibits for Article 32 proceedings and trials consistent (paragraphs 1.10.5. and 15.3.3.); clarifying the required number of copies of ROTs (Chapter 3); requiring a copy of the ROT to be forwarded to the United States Disciplinary Barracks in all cases involving confinement at that facility (paragraph 3.3.); clarifying thickness requirements for ROT volumes (paragraph 4.1.1.); using Arabic numerals instead of Roman numerals to identify ROT volumes (paragraph 4.1.2.); adding a suggested format for the Cover Page, Master Index and Receipt of Record (Figure 4.2) and a suggested format for Page 1 of Transcript (Figure 4.3); clarifying procedures for handling classified, controlled test materials, and sealed materials (Chapter 6), including sexually explicit materials not ordered sealed (paragraph 4.5.); clarifying the procedures for assembling abbreviated ROTs (Chapter 7) and summarized ROTs (Chapter 8); establishing new guidance for processing

ROTs in summary courts-martial ([Chapter 10](#)); adding a suggested format for Authentication of Record of Trial, including Trial Counsel's Certification of Review and Examination of Record by Defense Counsel (Figure 12.1); revising the suggested format for Article 32 summarized testimony (Figure 16.4); and adding detailed sample extracts for verbatim transcripts ([Attachment 4](#)).

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Chapter 1

PREPARING RECORDS OF TRIAL

1.1. Format. Prepare the ROT as prescribed in the Appendices 13 and 14, MCM, RCMs 1103 through 1305 and this manual. Figures 4.1 and 7.1 are guides for assembling ROTs. Submit requests for deviations to AFLSA/JAJM.

1.2. Paper. Use 15-pound bond or other high-quality 8 ¾ by 11-inch paper. Redlined margins and other legal formats, such as numbered lines are acceptable.

1.3. Margins. Leave a margin of 1-¾ inches, or more as necessary, at the top to permit binding. Leave a one-inch margin on the bottom and on the left and right sides of each page.

1.4. Font. Use non-script, 10-pitch (pica) type on typewriters and 12-point type on computers. Use only Courier, Times-Roman, or Times-New Roman fonts. Avoid a cursive or italic font, except when appropriate (e.g. citations). Use bold type for the initial identification of the accused, judge, counsel, court members, court reporter, and in the introductory preface to identify each witness. Type the complete name, including rank or other title, in bold print. In the introductory preface for identifying witnesses, type the name of the witness and the entire introductory clause describing the witness being called and sworn in bold type. Also use bold type to identify various stages of the proceedings (i.e. Article 39(a) Session, Direct Examination, Pleas, Findings, Sentence, etc.) and to identify the transition for questions being asked by trial counsel, defense counsel or the military judge. (For samples, see [Attachment 4](#)). Use of bold type to identify names at other locations in the ROT is not required, including names of individuals not participating in the trial (i.e. names of individuals referenced in witness testimony).

1.5. Page Breaks and Line Spacing.

1.5.1. Begin each session of court, as well as each Article 39(a) session, on a new page, separate from the other transcribed proceedings. The reporter should note the time and date of the beginning and ending of each session of the court, including the opening and closing of the court-martial during the trial.

1.5.2. Double-space text, returning to the left margin on second and subsequent lines, with the exception of pleas, findings, and sentence, which should be single-spaced, indented, and in bold print. Individual elements of offenses in guilty plea cases may be single-spaced but double-space between separate elements.

1.5.3. Continue double-spacing the text when changes in speakers occur, including the question and answer (“Q” and “A”) portions of the transcript. When typing Questions and Answers, ensure at least two lines or the entire text of a question or answer appears at the bottom of a page. Page break in appropriate places where necessary. Do not repeat the “Q” or “A” prefix at the top of the next page. To the extent practicable, use page breaks so that the answer to a question does not appear on a page separate from the question.

1.5.4. See [Attachment 4](#) for samples of page breaks and line spacing within transcripts.

1.6. Justification. Use left justification only, with the exception of pleas, findings, sentence, and elements of offenses in guilty plea cases, which may be justified both left and right. When using left justifi-

cation, indent 5 spaces from the left margin and type the appropriate prefix to indicate the identity of the speaker followed by a colon and two spaces. Also, indent 5 spaces from the left margin when typing the appropriate “Q” or “A” prefix followed by a period and two spaces. (See samples in Attachment 4). If a speaker’s testimony consists of two or more continuous, uninterrupted paragraphs, the subsequent paragraph(s) should be indented but do not require insertion of the speaker or “Q” and “A” prefix.

1.7. Punctuation Marks. Do not use exclamation marks. Dashes or hyphens may be used where the speaker changes thought or subject, where one participant interrupts another, or where other punctuation is not appropriate. Use periods at the end of complete thoughts to avoid lengthy sentences. Avoid phonetic spelling. Obtain correct spelling from counsel or the witness. The Government Printing Office Style Manual is a useful guide for punctuation.

1.8. Numbering Pages.

1.8.1. Number all pages in the transcribed ROT consecutively, beginning with “1.” Center the page number on the page $\frac{3}{4}$ inch from the bottom. If material is omitted and additional pages must be inserted, use the preceding page number plus a decimal and an Arabic number after the corresponding whole numbered page (e.g. “19.1”). In addition, annotate the bottom of the preceding page to reflect the following inserted page (e.g. “next page 19.1”) and annotate the return to consecutive numbering at the bottom of the last inserted page (e.g. “next page 20”). If a page number is omitted, but no page is actually missing from the transcript, note the missing page number at the bottom of the page preceding the missing page number (e.g. “there is no page 22; next page 23”).

1.8.2. A sample format for page 1 of the transcribed ROT is in Figure 4.3. Type at the bottom of page 1 “The convening orders, Special Order ____ dated ____ and Special Order ____ dated ____, are numbered as pages 1.1, 1.2, etc.” Type the appropriate page numbers on the convening order and any amendment to the convening order in the middle of the page one-half inch from the bottom of the order. The charge sheet is numbered in the same manner. For example, at the bottom of the page preceding the insertion of the charge sheet type “The charge sheet is numbered pages 4.1 through 4.5.”

1.9. Printer. Print all records of trial in a manner to produce a letter quality manuscript – a clear, solid, black imprint. Laser printers, ink-jet, or daisy-wheel are preferred, in that order. Dot matrix printers should be used only as a last resort. Letter quality on a dot matrix printer is a print head of at least 18-pin or characters consisting of at least 17 vertical by 23 horizontal dots in the letter quality mode.

1.10. Exhibits:

1.10.1. Taken from Article 32 Reports. When a part of the Article 32, UCMJ, investigation is used during the trial and made an exhibit, remove the item from the Article 32 report and insert it at the appropriate point in the ROT. Insert a sheet of paper in the Article 32 report stating where the original exhibit appears in the ROT. If the entire Article 32 report is made an exhibit, insert a sheet of paper at the place in the ROT where the Article 32 report normally goes (See Figure 4.1) stating where the report appears in the ROT.

1.10.2. Substituting for Originals. When possible, obtain the military judge's permission to withdraw an exhibit that consists of physical evidence and substitute a written description, photograph, or other means of description in the ROT. Do not substitute a photograph of a videotape for a videotape admitted into evidence and played in court. Substitute photocopies of documents for the originals and

return originals to the document custodian. Withdrawal and substitution may be made without the military judge's permission, if trial and defense counsel agree on the replacement photograph, replica, or description. See RCM 913(c)(2), Discussion.

1.10.3. Withdrawal of Exhibits. Describe exhibits withdrawn from the original ROT and substitute the description in the original and all copies of the ROT. Include the reasons for the withdrawal and substitution in the ROT.

1.10.4. Photographs. Since written descriptions are permitted as substitutes for exhibits withdrawn from the ROT, photographs are not necessary, unless a photograph is essential to the appellate process. (For example, a photograph of a small quantity of marijuana may well be extraneous.) If photographs are used, use 5x7 color photographs whenever possible. Several exhibits may be described on a single sheet of paper. Photographs taken by digital cameras are authorized.

1.10.5. Identifying Exhibits. The reporter is responsible for ensuring exhibits offered for identification or admission are properly marked. Mark exhibits at the bottom right corner of the page if possible. Except in rare cases, the court reporter, not counsel, premarks all exhibits to ensure the exhibits are marked uniformly. A stamp labeling the exhibit and also indicating when in the record the exhibit was offered and admitted or rejected should be available to the court reporter. Do not use stick-on labels to mark exhibits unless stamps are unavailable. Labels come off exhibits and make it difficult to later identify exhibits. Note the page(s) at which an exhibit is offered and admitted or rejected, as well as noting those pages on the Master Index (See Figure 4.2). The following is suggested language for the stamps:

Prosecution Ex __ for Identification

Offered Page ____ Accepted/ Rejected Page ____

Defense Ex __ for Identification

Offered Page __ Accepted/Rejected Page __

Appellate Ex __

Marked Page __

When there isn't enough space at the bottom right corner of a page for this information, mark the exhibit elsewhere on the front lower portion of the page. If there still is insufficient space, affix a blank sheet of paper to the front of the exhibit and place the stamp on the blank sheet as described above and type or print under the stamp "Consisting of ____ pages." Follow this procedure for 8" x 10" photographs. (We recommend using 5" x 7" photographs whenever possible). For smaller photographs, mount them on a blank sheet of paper and stamp the sheet of paper as described above. For exhibits consisting of more than one page, stamp or type "Page ____ of ____ pages." Number each side of a two-sided document as a separate page. Do not place exhibit stamps or labels on exhibits that will be returned to the owner (including the accused) after trial. Mark these exhibits lightly in pencil in the lower right-hand margin of the document, i.e., "Pros Ex 1 for ID," "Def Ex A for ID," "App Ex I." If there is insufficient room on a document to be returned to the owner to be marked on the front lower portion of the document, it is permissible to mark the exhibit on the backside of the document in the lower right-hand corner.

1.10.6. Bulky Exhibits. Do not send bulky physical items admitted into evidence with the ROT. Withdraw these items and replace them with a photograph or accurate description. When the size of an object is important, include a ruler or yardstick in the photograph.

1.10.7. Judicial Notice. When a military judge takes judicial notice of a document, publication or other item, reproduce the pertinent part of, or all of, the document, publication or item if possible. If the document, publication or item was not marked as an exhibit, append it to the ROT as an allied paper. For publications, include the first or cover page, an extract of the relevant contents, and, if applicable, a copy of the signature page.

Chapter 2

COPYING RECORDS OF TRIAL

2.1. Reproduction Methods. Photocopy the original ROT and do not use carbons unless photocopying services are not available.

2.2. One-Sided Copies. Produce the original transcript and all copies on one side of the paper only. Whenever a double-sided original document exists in a ROT, ensure that both the front and reverse sides of the page are numbered in the original ROT. When making copies of the ROT, ensure the reverse side of any double-sided original document is copied to a separate page.

2.3. Evidence Which Should not be Copied. Do not use photographs or other full-size reproductions of obligations or securities of the United States and foreign countries (currency, coins, bonds, etc.), or identification cards, passes, official badges, and other insignia of any department or agency of the United States. In such cases, if a written description will not suffice, include the item itself, or the original document or paper in the ROT.

Chapter 3

NUMBER OF COPIES OF THE ROT

3.1. Verbatim Transcript Required under RCM 1103. Prepare an original and four copies. (Forward the original and two copies to AFLSA/JAJM. The remaining copies are for the accused and retention by the base or GCM legal office, as appropriate.)

3.1.1. If verbatim transcript is required under RCM 1103 for a general court-martial but the sentence does not include death, a punitive discharge or confinement for one year or more, review by the Court of Criminal Appeals is not required. RCM 1201(a). In these cases, prepare the original and two copies. Forward the original to AFLSA/JAJM. The remaining copies are for the accused and retention by the base or GCM legal office, as appropriate. However, if The Judge Advocate General subsequently directs appellate review under RCM 1201(b)(1), prepare and forward two additional copies to AFLSA/JAJM.

3.2. Sentence Includes Confinement for 12 Months or More. Prepare an original and five copies. (Distribute the original and four copies as provided in paragraph 3.1. above. Forward the fifth copy to the confinement facility). See AFI 51-201, paragraph 9.14.

3.3. Cases in which Offender is in Confinement at United States Disciplinary Barracks (USDB). Prepare an original and five copies. Distribute the original and four copies as provided in paragraph 3.1. above. Forward the fifth copy to the USDB. This applies to all officer and enlisted members confined at the USDB, even if their sentence of confinement is less than 12 months.

3.4. All Other General Courts-Martial (GCM) and Special Courts-Martial (SPCM). Prepare an original and two copies. (Forward the original to AFLSA/JAJM. The remaining copies are for the accused and retention by the base or GCM legal office, as appropriate).

3.5. Summary Courts-Martial (SCM). Prepare an original and four copies. (Forward the original to AFLSA/JAJM. The remaining copies are for the accused, defense counsel, and the base and GCM legal offices.)

3.6. Additional Copies. In addition to the minimum number of copies needed, a staff judge advocate, on behalf of the convening authority, may authorize additional copies. For example, an additional copy may be reproduced and distributed to the defense counsel.

Chapter 4

ASSEMBLING RECORDS

4.1. Dividing Records Into Volumes. Divide ROTs that are over 1 1/2 inches thick into separate volumes as follows:

4.1.1. Make the first or only volume of a ROT an inch thick or smaller (after inclusion of SJA Recommendation, clemency matters, and other post-trial documents). This permits addition of appellate papers to the first volume of records when examined by the Air Force Court of Criminal Appeals. Make subsequent volumes 1 1/2 inches thick or smaller. Avoid assembling any volume that is less than a half inch thick by adding pages to it that would otherwise have been included in preceding or subsequent volumes.

4.1.2. Place like parts of the ROT together in volumes divided by subject, and divide them to meet volume thickness restrictions. Indicate the contents of the volume on the front cover (e.g., transcript, exhibits, or allied papers). If the transcript is split into two or more volumes, indicate on the front cover which pages of the transcript are in which volume. (i.e., Volume 2 of 4, Transcript, pages 1-300). Number each volume of the ROT as follows: "Volume 1 of 4." Assemble the record in accordance with Figure 4.1. In the upper right-hand corner of the DD Form 490, label the ROT to reflect which copy it is, i.e., "ORIGINAL," "ACCUSED," "JAJM-1," "JAJM-2", "DEFENSE COUNSEL," "BASE," "CONFINEMENT FACILITY," etc.

4.1.3. If the trial is lengthy, and the record is larger than three volumes, it is usually best to divide the trial transcript into more than one volume.

4.2. Dividers. Use un-tabbed dividers of heavy-stock paper, a different color from the record of trial, to make separations in a volume. Place a label in the lower right corner of the divider identifying the contents under the divider. Insert dividers as provided in Figure 4.1.

4.3. Binding Volumes of the Record of Trial. Bind the volumes at the top to withstand repeated handling. Add hard backings to the bottom of each volume (original and copies). GSA stocks an item which can be used for this purpose: "Blank Paper Lt. Green Press Board, Size 8 1/2 x 11 1/2, Prop # 1240-8, Item 06609090." Use 2-inch capacity Acco-type prong-and-clamp fasteners (e.g., GSA stocks an item that can be used for this purpose: "Fastener, paper w/compressor 2" capacity GSA Stock #7510002356068). Place tape over the backs of the fasteners only. Do not "sew" or "stack" fasteners together in gangs to bind thick volumes.

4.4. Videotapes. Package videotapes in sturdy envelopes, with no more than two to an envelope. Bind each envelope as a separate volume of the record and fasten the envelopes to the standard covers using Acco-type fasteners. Mark each envelope with the accused's full name, social security number, and exhibit number, if applicable. As discussed in paragraph 9.1., the party offering a videotape into evidence must prepare a description of the videotape's contents to serve as a suitable substitute in the ROT. Place on the bottom right corner of the description, the exhibit number, page offered, page accepted/rejected, and in which volume the videotape is placed. Provide a copy of the videotape for each copy of the ROT forwarded to AFLSA/JAJM.

4.5. Accused's Copy. Do not include classified materials, controlled test materials, or matters ordered sealed by the judge in the accused's copy. Follow the procedures in Chapter 6. Furthermore, if a ROT contains sexually explicit materials that have not been ordered sealed by the military judge, the following guidance applies to these items:

4.5.1. Remove these items from the accused's copy of the ROT. (This includes sexually explicit exhibits contained in Article 32 investigations). In place of the materials, insert a certificate stating the materials were removed due to their sexually explicit content and that the original ROT, which includes the materials, may be inspected at AFLSA/JAJM. Insert a certificate at each location such materials are removed.

4.5.2. Include these items in the original ROT and each copy of the ROT forwarded to AFLSA/JAJM. However, insert the materials, wherever located in the ROT, in a sealed opaque envelope containing the following label. "WARNING: SEXUALLY EXPLICIT MATERIALS ENCLOSED – NOT ORDERED SEALED BY THE COURT."

4.6. Organization of Contents of Record of Trial. Arrange the contents of the ROT as set forth in Figure 4.1, "Guide for Assembling Records of Trial," with heavy stock dividers used to separate major components of the records. To the extent applicable, include signed originals of pertinent documents in the original ROT. Explain the absence of an original document, and insert a certified true copy or signed duplicate original copy in the ROT. However, if a photocopy or datafax copy is provided in lieu of the original document for use in the proceedings, including pretrial and post-trial matters, treat the photocopy or datafax copy as an original and place it in the ROT. No certification is required.

Figure 4.1. Guide for Assembling Records of Trial.

GUIDE FOR ASSEMBLING RECORDS OF TRIAL (SPECIAL AND GENERAL COURTS-MARTIAL)

1. Front Cover, DD Form 490, **Record of Trial**. If computer generated forms are used, print the front cover of the DD Form 490 on hard card stock (Dutch Blue cover paper bearing stock number 9310-01-083-5214). There is no requirement to complete the Chronology Sheet inside the front cover of the DD Form 490, nor is there a requirement to reproduce the Chronology Sheet when computer generated forms are used. In addition, there is not a requirement to list the date of the first AMJAMS input on the cover of the DD Form 490. [Note: A duplicate DD Form 490 on hard card stock should be inserted at the beginning of each volume of a ROT. On each DD Form 490, remember to annotate the volume number and the volume's contents and remember to label each copy to reflect whose it is. (See paragraph 5.1.2).]

2. Chronology with reporter's transcription log.

3. Any orders transferring the accused to a confinement facility or paperwork pertaining to excess/appellate leave.

4. AF Form 304, **Request for Appellate Defense Counsel**. Ensure the form includes the accused's permanent address where he or she can be reached during the appellate process. Insert a copy in each ROT (not just the original) for general courts-martial, including those that are examined under Article 69(a), UCMJ, and all BCD-special courts-martial.

5. Court-Martial Data Sheet. (Either DD Form 494 or Air Force version may be used). Use of this form is optional. If used, include a copy in each additional copy of record.
6. Defense Counsel Article 38(c) Briefs, if any.
7. Court-Martial Orders -- Include 10 copies in the original ROT and one copy in each copy of the record for cases reviewed under Article 66 and Article 69(a). (See RCM 1111(a)(1)). Include four copies in the original ROT and one in each copy of the ROT for courts-martial which result in acquittal of all charges; are terminated before findings; and cases reviewed under Article 64(a).
8. Proof of Service on the defense counsel of the Staff Judge Advocate's recommendation (and Proof of Service on defense counsel of any addenda containing new matters).
9. Defense response to the Staff Judge Advocate's recommendation (and addenda), if any. [NOTE: If defense counsel combines the RCM 1105 and 1106 submissions in a single memorandum, place the memorandum addressing both matters as provided in paragraph 12 below and insert a page at this point in the record stating "Defense Response to Staff Judge Advocate's Recommendation is included with the RCM 1105 submissions."
10. Proof of Service of the Staff Judge Advocate's Recommendation on the accused (and Proof of Service of any addenda containing new matters on the accused) or a statement explaining why the accused was not served personally.
11. Staff Judge Advocate's Recommendation, with AF Form 1359, **Report of Result of Trial**, and Personal Data Sheet attached, and any addenda to the Staff Judge Advocate's Recommendation. Also include any AF Form 138, **Post-Trial Clemency Evaluation**, or other evaluations obtained by the government.
12. Post-trial matters submitted by accused under RCM 1105, in the following order, as applicable:
 - a. Defense counsel's memorandum pertaining to RCM 1105 submissions.
 - b. Accused's statement.
 - c. Other statements and submissions.
 - d. Notification letter to accused regarding submission of post-trial matters.
13. If the ROT is transferred to another GCM jurisdiction for review, insert documentation concerning the transfer in the following order:
 - a. Request for transfer (for disqualification or other reason).
 - b. Correspondence between GCMs.
 - c. Documents designating new GCM to review case.
14. Any request for deferment of post-trial confinement and action thereon.
15. Any request for deferment/waiver of automatic forfeitures and any action thereon.
16. Any request for deferment of reduction in grade and any action thereon.
17. Heavy stock divider.
18. Article 32 investigation, if any, and all related exhibits and attachments, in the following order, as applicable:

- a. Letter appointing Article 32 Investigating Officer (separate letter from convening authority to the investigating officer).
- b. DD Form 457, Investigating Officer's Report, unless the accused waived the Article 32 investigation. If waived, insert the written waiver at this point in the ROT.
- c. Recommendations of the SPCMCA to the GCMCA.
- d. Proof of Service of Article 32 report on accused and defense counsel.
- e. Defense objections to the Article 32 report, if any.
- f. Documents related to scheduling the Article 32 hearing, including delays.
- g. Additional Article 32 Investigations. Add documents, in the order described in (a) through (d) above, after the original Article 32 investigation report and related documents.

19. Heavy stock divider.

20. Pretrial Allied Papers, including:

- a. First indorsement to DD Form 458, Charge Sheet, - the unit commander's transmittal of the charges to the special court-martial convening authority with a copy of the personal data sheet as an attachment.
- b. Any other papers, indorsements, or investigations that accompanied the charges when referred for trial.
- c. Article 34 pretrial advice of the Staff Judge Advocate.
- d. Indorsement of convening authority to the pretrial advice.
- e. Proof of Service of Article 34 pretrial advice on accused and defense counsel.
- f. Pretrial Confinement proceedings, if any.
- g. Withdrawn charge sheets, if any.
- h. Other pretrial requests by counsel and the action taken thereon. Group the requests by subject area in chronological order, with the oldest on top to the most recent on the bottom. Subject areas include, but are not limited to, requests for delays, IMDC, mental health board reports, pretrial agreements, discharge in lieu of court-martial, witnesses, depositions, and immunity
- i. Record of any former trial - include 2 copies of the promulgating order only. However, in cases involving a retrial, comply with paragraph [12.1](#) of this manual.
- j. Miscellaneous pretrial related documents, when appropriate (i.e. writs, collateral litigation). [Note: It is not necessary to include the following items as allied papers in a ROT: Discovery requests/responses and court member selection documents (unless raised as an issue in a motion and not made appellate exhibits) and Congressional inquiries.

21. Heavy stock divider.

22. Record of Proceeding of Court-Martial, in the following order:

- a. Judge's errata sheet (AF Form 135), if any.
- b. Cover Page, Master Index of Proceedings, Witnesses and Exhibits, and Receipt of Accused (See suggested format at Figure 4.2). Since the preprinted index on DD Form 490 is inadequate to properly reflect the proceedings, witnesses, and exhibits, court reporters should substitute and expand upon the index as illustrated in Figure 4.2. Include all 39(a) sessions held and a brief

description of them. Pay special attention to noting the pages at which exhibits are offered and accepted/rejected, to include annotating those page numbers on the bottom of an exhibit as appropriate. If the accused does not receipt for ROT, ensure record contains trial counsel's certificate in lieu of receipt pursuant to RCM 1104(b)(1)(B) or substitute service on defense counsel pursuant to RCM 1104(b)(1)(C).

- c. Page 1 of the Transcript. Use suggested format at Figure 4.3, followed by:
 1. Convening order.
 2. Amending orders, if any.
 3. Written orders or correspondence detailing the military judge or counsel, if any.
 4. DD Form 1722, Request for Trial before Military Judge Alone, if any (unless marked as an appellate exhibit).
 5. Written request for enlisted members, if any (unless marked as an appellate exhibit).
 - d. Transcript of the proceedings of the court, including all Article 39(a) sessions. Insert the original Charge Sheet, at arraignment. (Note: If pen and ink changes have physically been made on the original charge sheet after arraignment, insert at arraignment a photocopy of the charge sheet as it existed at arraignment followed by the original charge sheet containing the post arraignment changes. Include a notation in the ROT identifying the page numbers for "the photocopy of the charge sheet as it existed at arraignment" and the page numbers for "the original charge sheets with the post arraignment changes.")
 - e. Authentication sheet, including trial counsel's certificate of review and defense counsel's examination of the record. (For format, see Figure 12.1).
 - f. Certificate of Correction, if any.
 - g. Action of the Convening Authority.
 - h. Assumption of or appointment to command orders, if the commander who takes the action is different from the commander who referred the case.
23. Heavy stock divider.
 24. Post-trial sessions. (Page numbers should continue in sequence from end of the transcript of the original proceedings, and will be separately authenticated if initial proceedings have been previously authenticated. Additional exhibits should be lettered or numbered in sequence, following those already marked/admitted.)
 25. Heavy stock divider.
 26. Prosecution exhibits admitted into evidence.
 27. Heavy stock divider.
 28. Defense exhibits admitted into evidence.
 29. Heavy stock divider.
 30. Prosecution exhibits marked but not offered and/or admitted into evidence.
 31. Heavy stock divider.
 32. Defense exhibits marked but not offered and/or admitted into evidence.

- 33. Heavy stock divider.
- 34. Appellate exhibits.
- 35. Heavy stock divider.
- 36. Any records of proceedings in connection with vacation of suspension.
- 37. Hard Backing. There is no longer a requirement to include the inside back cover of the DD Form 490 (Instructions for Preparing and Arranging Record of Trial) in the ROT. However, each separate volume of a ROT (original and copies) should contain a hard backing.

Figure 4.2. Suggested Format for Cover Page, Master Index, and Receipt of Record

RECORD OF TRIAL		
of		
(Name: Last, First, Middle Initial)	SSN	(Rank or Grade)
(Organization)	(Branch of Service)	(Station or ship)
COURT-MARTIAL		
Convened by _____ <div style="text-align: center; margin-top: 10px;">(Title of convening authority)</div>		
(Command of convening authority)		
at _____ on _____ <div style="display: flex; justify-content: space-around; margin-top: 10px;"> (Place of Trial) (Date or Dates of Trial) </div>		

MASTER INDEX

	<u>Starting Page</u>	<u>Volume Number</u>
INITIAL ARTICLE 39(a) SESSION		
Introduction of Persons Present		
Detail and Qualifications of Trial Counsel/Assistant Trial Counsel		
Assistant Trial Counsel Sworn		
Accused's Rights to Counsel Explained		
Detail and Qualification of Defense Counsel		
Qualifications of Civilian Defense Counsel		
Civilian Defense Counsel Sworn		

Starting Page Volume Number

Detail and Qualifications of Military Judge
Challenges to Military Judge
Accused's Rights to Choice of Forum Explained
Accused's Request to Trial by Military Judge Alone
Request for Trial by Members
Request for Enlisted Members

PROCEEDINGS OF THE COURT

Arraignment
Charge Sheet
Motions
 Motion to ____
 MJ Ruling on Motion
 Motion to ____
 MJ Ruling on Motion
Plea
Guilty Plea Inquiry
Stipulation of Fact Inquiry
Pretrial Agreement Inquiry
Identification of Members
Members Sworn
Voir Dire
Individual Voir Dire
Challenges of Members
Opening Statement by Trial Counsel
Opening Statement by Defense Counsel

FINDINGS PORTION OF THE PROCEEDINGS

Presentation of Prosecution Witnesses and Evidence
 (see attached witness and exhibit indices)
Presentation of Defense Witnesses and Evidence
 (see attached witness and exhibit indices)
Rebuttal (see attached witness and exhibit indices)
Surrebuttal (see attached witness and exhibit indices)
Article 39(a) Session on Proposed Instructions
Closing Argument by Trial Counsel
Closing Argument by Defense Counsel

Starting Page Volume Number

Rebuttal Argument by Trial Counsel
Instructions on Findings
Court Closed for Deliberations on Findings
Findings Announced

SENTENCING PORTION OF PROCEEDINGS

Rights of Allocution, Extenuation, and Mitigation
Presentation of Prosecution Witnesses and Evidence
 (see attached witness and exhibit indices)
Presentation of Defense Witnesses and Evidence
 (see attached witness and exhibit indices)
Rebuttal (see attached witness and exhibit indices)
Surrebuttal (see attached witness and exhibit indices)
Article 39(a) Session on Proposed Instructions
Closing Argument by Trial Counsel
Closing Argument by Defense Counsel
Rebuttal Argument by Trial Counsel
Instructions on Sentencing
Sentence Announced
Accused Advised of Post-Trial and Appellate Rights
Court Adjourned

WITNESS TESTIMONY**in the case of****United States v. _____**

Name of Witness	Direct and Redirect	Cross and Recross	Examined by Court/MJ
------------------------	----------------------------	--------------------------	-----------------------------

PRE-TRIAL MOTIONS:**FINDINGS WITNESSES:****Prosecution****Defense****Rebuttal****Surrebuttal****SENTENCING WITNESSES:****Prosecution****Defense****Rebuttal****Surrebuttal**

EXHIBITS**in the case of****United States v. _____**

Brief Description	Page Offered	Page Admitted	Page Rejected	Page W/D
--------------------------	---------------------	----------------------	----------------------	-----------------

PROSECUTION EXHIBITS

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

DEFENSE EXHIBITS

- A.
- B.
- C.
- D.
- E.
- F.

EXHIBITS OFFERED BUT NOT ADMITTED

Prosecution Exhibit
Prosecution Exhibit
Defense Exhibit
Defense Exhibit

APPELLATE EXHIBITS

- I.
- II.
- III.
- IV.
- V.

COPIES OF RECORD

_____ copy of record furnished the accused as per attached certificate of receipt.

_____ copies of record forwarded herewith.

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v.
_____ delivered to me at _____ this ____ day
of _____, _____.

(Signature of accused)

Figure 4.3. Suggested Format for Page 1 of Transcript**PROCEEDINGS OF A _____ COURT-MARTIAL**

The military judge called the Article 39(a) Session to order. The court met at _____ AFB, _____, at ____ hours on _____, pursuant to the following orders:

[The convening order(s), Special Order _____, dated _____, and Special Order _____, dated _____, are numbered as pages 1.1 and 1.2. The USAF Trial Judiciary, _____ Circuit (AFLSA), memorandum dated _____ detailing the Military Judge is numbered as page 1.3.]

(Note: Also insert and include a reference to a Request for Military Judge Alone or a Request for Enlisted Members if such a request is not made an Appellate Exhibit)

Chapter 5

SPECIAL FORMAT FOR TRANSCRIPTS

5.1. Verbatim Transcript in Summarized Cases. A verbatim transcript may be prepared when RCM 1103(b)(2)(C) authorizes a summarized transcript.

5.2. Court Reporter Log. The reporter keeps a log of the opening and closing of all sessions of a court-martial such as recesses, adjournments, Article 39(a) sessions and closed session deliberations.

5.3. Oaths to Military Judges, Court Members, Counsel, Reporters, Interpreters, and Witnesses. It is not necessary to record verbatim the oath actually used. Record only that the individual took an oath or affirmation. Recite that the military judge, court members, counsel, reporters, interpreters, and witnesses were sworn (for format, see Appendices 13 and 14, MCM). For those legal personnel previously administered a one-time oath, indicate in the ROT that they were previously sworn.

5.4. Article 39(a) Session. Use the following format for an Article 39(a) session:

ARTICLE 39(a) SESSION

[The Article 39(a) session began at 1333 hours, 16 August 1998. The military judge, trial counsel, defense counsel, accused, and the reporter were present.]

(Verbatim or summarized transcript of entire session)

[The Article 39(a) session adjourned at 1337 hours, 16 August 1998.]

(Note: Insert Page Break between Sessions.)

[The court was called back to order at 1338 hours, 16 August 1998, with all necessary parties present, including the court members.]

5.5. Assembly of Court-Martial after Termination of Initial Article 39(a) Session in a Member's Trial. In a verbatim transcript, after the initial Article 39(a) session ends, use the following format:

MJ: This Article 39(a) session is adjourned.

[The Article 39(a) session adjourned at 1340 hours, 14 August 1998.]

(Note: Insert Page Break between Sessions.)

PROCEEDINGS OF THE COURT-MARTIAL

[The court-martial was called to order at 1615 hours, 14 August 1998.].

MJ: The court-martial will come to order.

TC: This court-martial is convened by...

5.6. Recess. Use the following format for a recess:

MJ: The court-martial will be in recess for 15 minutes.

[The court-martial was recessed at 1645 hours, 14 August 1998.]

(Note: Insert Page Break between Sessions.)

[The court-martial was called back to order at 1700 hours, 14 August 1998, with all parties present who were present when the court-martial recessed.]

5.7. Reconvening. Those portions of the proceedings in which the military judge calls the court-martial to order and the trial counsel states all parties to the trial are present, etc., may be transcribed verbatim or summarized as shown in paragraph 5.6. The court reporter must account for the parties. If trial counsel fails to account for the parties, the reporter notes those present.

5.8. Court Members. When a member other than the president speaks, identify the member by the "MBR" abbreviation, abbreviated rank and last name. For example:

DC: Does any member of the court-martial know the accused?

MBR (CAPT SMITH): I do.

If the president of the court-martial is the member speaking, use only the abbreviation "PRES."

5.9. Voir Dire.

5.9.1. Note non-verbal responses by members, as a group or individually, when the questioning counsel fails to mention it. For example:

TC: Does any member know of any reason that would prevent him or her from sitting as a member?

[Negative response by all members.]

5.9.2. Challenges of Members. When a challenge against a court member is sustained, show it as follows:

[MBR CAPT SMITH, the challenged member, having been excused by the military judge, withdrew from the courtroom.], or

[The court-martial was called to order at 1700 hours, 14 August 1998, with all parties present, including the members. MBR CAPT SMITH was not present.]

5.10. Interrupted Testimony. The following example shows how to report an interruption.

CROSS-EXAMINATION

Questions by Defense Counsel:

Q. Mrs. Wilson, you stated on direct examination that you have known Airman Foster for 3 years and

A. Well, that was give or take a few months either way; I wasn't being precise on that point.

Q. ---- and that he had always paid his bills in a rather lax fashion. What do you have to say about these receipts? (Defense Exhibit B handed to the witness by the defense counsel).

A. Well, I ----

Q. You do admit that he paid these on time, at least on a monthly basis, perhaps not on the 1st of the month, but----

A. Yes, there was one period when he was prompt with his payments.

5.11. "Stricken" Portion. When a trial participant uses the phrase "strike that," transcribe all of the remarks, including the instruction to "strike" part of it. For example:

Q. Mr. Black, did you know it was Mr. Blue who--strike that--did you know it was Mr. Brown who made that statement?

5.12. Testimony through an Interpreter. In cases involving a witness speaking through an interpreter, transcribe the testimony as if the translation came directly from the witness, except when the interpreter makes a comment clearly not coming from the witness. Example:

Q. And how long have you been acquainted with Frau Kugler, who is also employed by your firm?

A. Since three years.

Q. And what day does Frau Kugler bring in the company receipts for accounting purposes?

A. Donnerstag.

DC: Excuse me, but the interpreter should use only English in his translation.

INT: Excuse me, sir, I mean Thursday.

5.13. Non-response by a Witness.

Q. Then there is a doubt in your mind?

A. [No response].

5.14. Non-verbal Responses and Gestures. Some gestures by counsel or witnesses may be essential to the meaning of oral testimony. For example, a statement by a witness, "He hit me here," or "I was about this far," does not provide an adequate basis for reviewing authorities to determine what happened at trial. Counsel and the military judge are primarily responsible for orally describing gestures. If they fail to do so, the reporter should include a general, factual description, e.g., "He tried to bite me here [witness pointed to the right side of her neck]" or "It was about this far apart [witness held her hands approximately 18 inches apart]." Do not include an opinion or conclusion in the description. Descriptions, such as "The witness appeared surprised," or "She said in a loud, husky voice," are improper.

5.15. Transcribing Quotes into the Record. When legal references and other materials not being offered into evidence or marked for identification are read, place quotation marks around it in the transcript. Include the correct spelling and citation of the material. Lengthy material may be offered as an appellate exhibit.

5.16. Excusing Witness from the Courtroom. Annotate the military judge's excusal of witnesses from the courtroom as follows:

[The witness, after being instructed not to discuss his testimony, was excused and left the courtroom subject to recall.]

NOTE:

If the witness was not instructed by the military judge regarding discussing his testimony, do not include that portion of the standard entry. If the witness was not held subject to recall, do not include that portion of the standard instruction. Summarize what instructions were given to the witness.

5.17. Closing and Reopening the Court-Martial. For example:

MJ: The court-martial will be closed.

[The court-martial closed at 1845 hours, 14 August 1998.]

(Note: Insert Page Break between Sessions.)

[The court-martial opened again at 2005 hours, 14 August 1998, with all parties present who were present when the court-martial closed.]

If, while the court-martial is closed, the military judge convenes an Article 39(a) session, annotate the session immediately after the date and time the court-martial closed. See paragraph 5.4.

5.18. Reporter Reads the Record. If the military judge directs the reporter to read a portion of the record from the notes, or replay a portion of the taped record, transcribe it as follows: "The reporter read the portion of the proceedings between page __, line __ and page __, line __, at the direction of the military judge."

5.19. Miscellaneous Examples for Summarized Transcripts. The following are examples of summaries of standard parts of trial for use in summarized transcripts. These are examples only and the court reporter should take care to summarize what actually took place in the court-martial being transcribed and not substitute these examples.

5.19.1. Explanation of Stipulation of Fact to the Accused.

The military judge explained to the accused and ascertained that the accused understood the meaning and effect of the Stipulation of Fact, Prosecution Exhibit ____ for ID, and that the accused consented to its use as evidence by the court. The military judge further stated that the Stipulation of Fact would be used to determine the providence of the guilty plea. Prosecution ____ for ID was admitted into evidence, subject to the acceptance of the guilty plea.

5.19.2. Post-Trial and Appellate Rights.

The military judge advised the accused of his post-trial and appellate rights. Appellate Exhibit ____ was provided by the defense counsel. It consisted of written advice, signed by the accused and defense counsel advising the accused of his post-trial and appellate rights.

5.19.3. Stipulation of Expected Testimony.

The Stipulation of Expected Testimony was marked as Appellate Exhibit _____. The military judge explained to the accused and ascertained that the accused understood the meaning and effect of the Stipulation of Expected Testimony. The accused consented to the use of the Stipulation of Expected Testimony.

5.19.4. Accused's Request that Defense Counsel Argue for a Bad Conduct Discharge.

Appellate Exhibit _____ was marked and provided to the military judge. The military judge explained to the accused and ascertained that the accused understood the meaning and effect of his request that his counsel argue for a bad conduct discharge. After extensive questioning of the accused, the military judge found that the accused made a knowing and intelligent decision to have the defense counsel argue for a bad conduct discharge. The military judge granted permission for such an argument.

5.19.5. Pretrial Agreement.

The military judge ascertained that there was a pretrial agreement in this case. The pretrial agreement was marked as Appellate Exhibit _____, and Appendix A thereto was marked as Appellate Exhibit _____.

The military judge inquired into and ensured that the accused fully understood the entire agreement and was satisfied with its terms; that he understood the meaning and effect of his pleas and desired to plead guilty; that the agreement was in substantial compliance with the requirements of the applicable regulations and law; that it was not contrary to public policy and the military judge's notion of fairness; and that the parties agreed to its terms.

5.19.6. Acceptance of a Guilty Plea.

The military judge announced that each guilty plea of the accused was found to have been voluntarily made with the full knowledge of its meaning and effect and, specifically, that the accused knowingly and consciously waived his rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by and to cross-examine the witnesses against him. The military judge found the pleas of guilty to be voluntary and that they had an adequate factual basis. The military judge accepted the guilty pleas.

5.19.7. Sentence Limitation of a Pretrial Agreement.

The military judge examined Appellate Exhibit _____, Appendix A to the pretrial agreement. The military judge questioned the accused with regard to the sentence to be approved by the convening authority and determined that the accused understood it. Thereafter, the military judge stated that he found Appendix A to comply with public policy and the law; that it was not ambiguous in its terms; and that it did not deny the accused his right to due process.

5.20. Certificate of Correction. A ROT which is found to be incomplete or in error, may be corrected after authentication. A certificate of correction may be completed by the court reporter and authenticated by the military judge. RCM 1104 (d) and Appendix 14, MCM, set forth the procedure and provides the format for a certificate of correction. Place it in the ROT immediately before the Action of the Convening Authority. (see Figure 4.1)

Chapter 6

CLASSIFIED, CONTROLLED TEST AND SEALED MATERIALS IN THE ROT

6.1. Procedures for Classified Materials. Trial counsel and court reporter must ensure they are familiar with procedures for safeguarding and handling classified documents, tapes, the ROT, and all associated materials. Transcribe classified portions of a ROT on a computer designated for classified use only. When a ROT contains classified material that cannot be declassified, the ROT, or portions thereof, must be classified. Refer to DoDD 5200.1-R, AFD 31-4, and AFI 31-401 to determine whether a particular record must be classified. Ensure the appropriate classified cover sheet is placed over the top of any classified volume. Handle and protect classified materials in accordance with current directives for such materials.

6.1.1. Classified Testimony: Trial counsel notifies the court reporter of the beginning and termination of each classified portion of testimony. Transcribe these portions on separate pages and assemble them under separate cover. Annotate in the unclassified ROT, at the place where the classified testimony occurred, the pages containing classified information, the classification of those pages, and the fact that they are bound under separate cover.

6.1.2. Include classified materials in the original record of trial only, with a copy maintained at the office of the servicing staff judge advocate in case the original is lost in the mail. All other copies, including the accused's copy, shall be expurgated copies of the record of trial with the classified information deleted or withdrawn and a certificate inserted in its place. (See RCM 1104). The certificate informs the accused the complete ROT, including the classified material, may be examined in the Office of The Judge Advocate General under such conditions as AFLSA/JAJM may prescribe, consistent with RCM 1104(b)(1)(D)(iii).

6.2. Procedures for Controlled Test Materials. Safeguard and protect controlled test materials from further disclosure or unauthorized access. Controlled test materials include promotion testing materials, professional military education test materials, and career development course exams. AFI 36-2605 requires the safeguarding of unclassified controlled test materials as confidential material in accordance with DoD 5200.1-R/AFI 31-401.

6.2.1. Label the DD Form 490 and each page containing controlled test material as follows:

CONTROLLED TEST MATERIAL

SPECIAL HANDLING REQUIRED

6.2.2. Assemble all controlled test materials in a separate volume of the ROT. Insert a sheet of paper in the ROT where each exhibit or testimony containing controlled test materials would otherwise be located with an annotation identifying the volume in which these materials are actually located.

6.2.3. Place controlled testing materials in a stout, opaque envelope, sealed completely with strapping tape. The envelope should be annotated "CONTROLLED TEST MATERIALS – SPECIAL HANDLING REQUIRED. SEALED PURSUANT TO AFMAN 51-203, CHAPTER 6 AND AFI 36-2605." If the military judge also ordered the controlled test materials to be sealed, add to the annotation "ORDERED SEALED BY THE MILITARY JUDGE, ROT PAGE(S)____."

6.2.4. Place controlled test materials in the original ROT only, with a copy maintained by the office of the servicing staff judge advocate in case the original is lost in the mail. Do not include controlled

test materials in the accused's copy and other copies of the ROT. In these copies, insert a certificate in place of the controlled test materials. The certificate informs the accused (and others) that the controlled test materials have been withdrawn, that the complete record is kept at AFLSA/JAJM, and that it may be examined under such conditions as the record custodian prescribes.

6.3. Procedures for Sealed Materials. The term "sealed materials" is defined as those items, other than classified and controlled test materials, that a military judge, in the interest of justice, orders sealed in the ROT. Sealed materials may include testimony, exhibits, and pretrial documents (i.e. exhibits to Article 32 investigations). Sealed materials will typically involve contraband materials, such as sexually explicit pictures, or matters involving a high privacy interest, such as sensitive victim photographs or testimony.

6.3.1. Military judges, on their own initiative, may order that specified materials in a ROT be sealed. In addition, when ROTs will contain matters for which sealing is appropriate, trial counsel should ask the military judge to order those matters sealed in the ROT. Matters ordered sealed by the military judge should also be labeled as appellate exhibits and included in the ROT.

6.3.2. Label the DD Form 490 and each page containing sealed materials as follows:

SEALED MATERIALS

SPECIAL HANDLING REQUIRED

6.3.3. Place matters ordered sealed by the military judge in a stout, opaque envelope, sealed completely with strapping tape. The envelope should be annotated "SEALED ITEM – SPECIAL HANDLING REQUIRED. SEALED BY MILITARY JUDGE, ROT PAGE ____." If the sealed matters are too bulky to be included with the other appellate exhibits, create a separate volume for them and insert a sheet of paper in the ROT stating where the sealed matters are located. For example:

SEALED MATTERS

Appellate Exhibit ____ was ordered sealed by the military judge, ROT page _____. It is to remain sealed and opened only by order of the court. Appellate Exhibit ____ is found in Volume ____ of ____.

6.3.4. Place sealed matters in the original ROT only, with a copy maintained by the office of the servicing staff judge advocate in case the original is lost in the mail. Do not include sealed materials in the accused's copy and other copies of the ROT. Withdraw the sealed materials and insert a certificate informing the accused (and others) that the complete record is kept at AFLSA/JAJM and that it may be examined under such conditions as the record custodian prescribes.

Chapter 7

ABBREVIATED RECORDS OF TRIAL

7.1. Preparing Abbreviated ROTs. The abbreviated ROT consists of the items listed in Figure 7.1 and RCM 1103(e). Prepare abbreviated ROTs in the following GCMs and SPCMs:

- 7.1.1. Those resulting in an acquittal of all charges and specifications;
- 7.1.2. Those resulting in a finding of not guilty of all charges and specifications only by reason of lack of mental responsibility; and
- 7.1.3. Those terminated by withdrawal, mistrial, or dismissal before findings.

FIGURE 7.1. GUIDE FOR ASSEMBLING ABBREVIATED RECORDS OF TRIAL.

GUIDE FOR ASSEMBLING ABBREVIATED RECORDS OF TRIAL

1. DD Form 490 - Front Cover.
2. Court reporter's chronology with transcription log.
3. Promulgating Order.
4. Master Index and Accused's Receipt (See Attachment 3).
5. Transcript (See Attachment 3). This is an abbreviated transcript reflecting the arraignment, pleas, findings on jurisdiction, if any, findings on the charges and specifications, and termination of the court-martial before findings with prejudice to the government. Jurisdiction will normally be apparent from the Charge Sheet. The following items must be included within this transcript:
 - a. Convening order and any amendments
 - b. DD Form 458, **Charge Sheet**
6. Authentication sheet, including trial counsel's certificate of review and defense counsel's examination of the record. (For suggested format, see Figure 12.1).
7. Heavy Stock Divider

NOTE:

There is no requirement to attach exhibits to an abbreviated ROT.

Chapter 8

SUMMARIZED RECORDS OF TRIAL

8.1. Preparing Summarized ROTs: A summarized ROT is a ROT that contains a summarized report of the proceedings authorized under RCM 1103(b)(2)(C). The summarized report of proceedings must accurately reflect the substance of all the proceedings and must be sufficiently detailed and complete to permit resolution of any contested factual or legal issue upon review (See Appendix 13, MCM). Include a more detailed summary of Article 39(a) sessions held to discuss instructions for findings. If instructions are altered, added or omitted between what is agreed to during the Article 39(a) session and the actual delivery to the members, note that in a summary. Attachment 2 is a sample summarized report of proceedings. ROT containing a summarized report of proceedings should be assembled in accordance with the guidance in Figure 4.1.

8.2. Verbatim Portions. The following parts of a summarized report of proceedings must be verbatim:

- 8.2.1. Findings on the jurisdictional basis for prosecution of the offenses, if any;
- 8.2.2. Findings;
- 8.2.3. Sentence;
- 8.2.4. Any other verbatim portions requested by reviewers.

8.3. Video or Audio Recordings. When an audiotape or videotape recording is played at trial, the record may include a verbatim transcript of the material played before the court, or, at the discretion of the military judge, the material on the tape may be summarized. If the videotape is silent, the party offering the videotape should describe what is depicted on the tape for the court. Attach the original tape as an exhibit to the original ROT forwarded to AFLSA/JAJM. Attach a copy of the tape to the copy of the ROT maintained by the convening authority's SJA.

8.4. Other Magnetic Media. If evidence consisting of the contents of magnetic media, e.g. computer diskettes, tapes, or hard drives, is introduced into evidence, the party offering the magnetic medium must prepare a written summary of the contents of the magnetic medium offered as an exhibit. This may be as little as a list of sub-directories and files. Attach the original medium and summary to the ROT as an exhibit. If a hard drive is introduced, the military judge may authorize substitution of exact copies of the contents of the hard drive or other large medium. Attach a copy of all magnetic media that is in the original record of trial to the copy maintained by the convening authority's SJA.

8.5. Summarized Voir Dire. Individual Voir Dire. Summarize the individual voir dire of a court member whose challenge for cause was denied by the military judge (see Appendix 13, MCM).

Chapter 9

SPECIFIC REQUIREMENTS FOR VERBATIM RECORDS

9.1. Video or Audio Recordings. When an audiotape or videotape recording is played at trial, include a verbatim transcript of the material in the ROT. It is the responsibility of the party offering a videotape to prepare a summary of the scene and action depicted in a videotape for the ROT. Attach the tape to the original ROT as an exhibit and a copy of the tape to each copy of the ROT forwarded to AFLSA/JAJM. Attach a copy of the tape to the copy of the ROT retained by the convening authority's SJA also.

9.2. Other Magnetic Media. If evidence consisting of the contents of other magnetic media, e.g. computer diskettes, tapes, or hard drives, is introduced at trial, include a verbatim transcript of the material extracted from the magnetic media introduced at trial in the ROT. (If the material is graphic, summarize the description of the material.) The party who offers the magnetic medium prepares a summary of the contents of the magnetic medium offered. (This may be as little as a list of sub-directories and files.) Attach the original (if it is a tape or diskette) and the summary to the original ROT as an exhibit. The military judge may authorize substitution of exact copies of the contents of large mediums, such as the contents of a hard drive. Attach copies of all magnetic media made part of the original ROT to the copy of the ROT retained by the convening authority's SJA.

9.3. Instructions. Include the full text of the instructions given by the military judge or president in the ROT. Parenthetical entries, such as "The military judge read Appellate Exhibit I to the court," are not adequate.

Chapter 10

RECORDS OF TRIAL FOR SUMMARY COURTS-MARTIAL

10.1. DD Form 2329. Use DD Form 2329, Record of Trial by Summary Court-Martial, as the ROT in all summary courts-martial (SCM) (See Appendix 15, MCM). A complete SCM ROT shall include a DD Form 490 as the “Front Cover,” the DD Form 2329, and the following documents, if applicable: Convening Order, Charge Sheet with First Indorsement, Accused’s Receipt for ROT, Clemency Submissions, Notice of Post-Trial Submissions, Exhibits, and other Allied Papers. An original and 4 copies of the ROT are required pursuant to paragraph 3.5. of this instruction.

10.2. Numbering. Number each SCM ROT at the top right corner of the DD Form 2329 and the top right corner of the first page of the ROT (the DD Form 490 cover page). SCM ROTs should be numbered serially in the order in which received for action. Use a number consisting of the first three letters of the name of the base where the case was tried, the last two digits of the year and the number of the court. (For example, BOL, 98-1, indicating the first SCM at Bolling AFB in 1998).

10.3. Authentication. The ROT is authenticated by having the having the officer detailed to serve as summary court-martial sign each copy.

10.4. Service of ROT and Post-Trial Submissions. As soon as the ROT (DD Form 2329) is authenticated, serve a copy upon the accused and obtain a receipt (See Appendix 14, MCM, for format of receipt). If a copy of the ROT cannot be served on the accused, serve it on the defense counsel and attach to the ROT an explanation as to why it cannot be served on the accused. The accused may submit written matters to the convening authority in accordance with RCM 1105. Add such matters to the original and each copy of the ROT (except for the copy previously served upon the accused).

10.5. Convening Authority Action. Show the action of the convening authority on each copy of the DD Form 2329, except the copy previously served upon the accused, and distribute the action to the accused, defense counsel, the SCM officer, the accused’s immediate commander, the local MPF, the local Finance Office, and the confinement facility, as appropriate. A promulgating order is not necessary. However, use a promulgating order to take any additional action on a SCM after the initial action of the convening authority. See RCM 1306(b)(4).

10.6. Post Action Review. After convening authority action, forward the original and one copy of the ROT to the staff judge advocate for the general court-martial convening authority for review under Article 64(a), UCMJ. The Article 64(a) review should be annotated on the DD Form 2329 and on the front cover (DD Form 490). Upon completion, the original ROT, containing the original DD Form 2329, should be forwarded to AFLSA/JAJM. Copies of the DD Form 2329 containing the Article 64(a) review are distributed, to the extent practical, in accordance with AFI 51-201, paragraphs 10.1.9 and 11.4.

Chapter 11

RECORDS OF GCMS OR SPCMS TERMINATED BY MISTRIAL, DISMISSAL OF ALL CHARGES OR OTHERWISE TERMINATED WITHOUT FINDINGS

11.1. Retrial Intended. If the accused may be retried on the same or corrected charges, prepare a verbatim ROT to the point of termination, authenticate it and serve a copy on the accused. Attach the ROT of the first proceeding to the ROT of the second proceeding.

11.2. Retrial Not Intended. If the accused will not be retried on the same or corrected charges, prepare the ROT in the same manner as an acquittal. See [Chapter 7](#) above and RCM 1103(e).

11.3. Cases Not Tried. When there is an Article 32 investigation and no court-martial follows, dispose of the report of investigation under AFMAN 37-139.

Chapter 12

AUTHENTICATING GCM AND SPCM ROTS

12.1. Authentication of Record and Trial Counsel's Certificate of Review. Authenticate the ROT in accordance with RCM 1104. Before forwarding the ROT to the military judge or court reporter for authentication, trial counsel or assistant trial counsel must examine the ROT for accuracy. Trial counsel or assistant trial counsel (whichever one examines the ROT) shall sign a certificate to evidence the fact that such an examination was accomplished. See Figure 12.1 for a suggested format for the authentication of record, including trial counsel's certificate of review.

12.2. Court Reporter. With the prior approval of the military judge, the court reporter may authenticate the ROT of a non-BCD SPCM. See RCM 1104 (a)(2)(A).

12.3. Substitution of Military Judge. If a substitution of the military judge or court reporter occurs during the trial, each individual authenticates that portion of the ROT concerning proceedings at which the authenticator was present. Indicate the pages of the ROT covered by the authentication of each above the authenticator's signature. In the event the military judge is unavailable to authenticate the ROT, see RCM 1104.

12.4. Forwarding the ROT Without the Article 32 Investigation. The ROT of a GCM or SPCM may be sent to the military judge for authentication without the Article 32 investigation report and allied papers, unless those documents were introduced at trial as exhibits.

12.5. AF Form 135, Corrections to Record of Trial. Include this errata sheet with ROTs forwarded to the military judge so the military judge can annotate the location and wording of any necessary corrections.

12.6. Correcting Errors in ROT:

12.6.1. ROTs may not be authenticated "subject to correction." Correct errors before authentication. Except as provided in RCM 1104(d), do not retype a page in a ROT after authentication.

12.6.2. Minor corrections, misspellings, punctuation, and similar corrections may be made on the "original" copy of the record in pen or typewriter. The authenticator making the correction initials next to the correction. For major corrections requiring an entire page to be retyped, the authenticator, if other than the court reporter, contacts the court reporter and indicates the needed changes. The reporter types a new page with the corrections and sends it to the authenticator. If it becomes necessary to insert additional pages, number them as described in [1.8.1](#).

12.6.3. After receiving the original authenticated ROT from the military judge, photocopy the errata sheet (AF Form 135), any pages with changes, and substitute them for the corresponding uncorrected pages in each copy of the ROT. The pages with corrections cannot be retyped after authentication. The corrected pages must remain part of the ROT.

12.6.4. After authentication, the court reporter ensures all copies of the ROT are complete and identical to the original authenticated ROT. AF Form 135 is placed in the ROT as shown in Figure 4.1.

12.7. Examination by Defense Counsel:

12.7.1. Except when unreasonable delay will result, trial counsel shall permit the defense counsel to examine the ROT before authentication. Although examination of the ROT by defense counsel is not a part of the authentication, it is desirable that the ROT reflect defense counsel review. After examination of the record, defense counsel should complete a certificate of examination using the format in Figure 12.1. When defense counsel is not given the opportunity to examine the record before authentication, the reasons should be attached to the record. See RCM 1103(i)(1)(B) and Appendix 14, MCM. The reasons can be provided in a certificate signed by the trial counsel.

12.7.2. Defense counsel is entitled to respond to the recommendation of the SJA and to submit an Article 38(c), UCMJ, brief. Provide a copy of the ROT to the defense counsel responsible for clemency matters (as determined on the record by the military judge) no later than the date defense counsel is served the SJA's recommendations (RCM 1106(f)). Earlier transmittal is desirable. Defense counsel may retain this copy until submission of the RCM 1106(f)(4) response. If the copy is provided to defense counsel before authentication, furnish copies of any corrected pages and the AF Form 135, which have been otherwise corrected, on or before the date of service of the SJA's recommendations. Defense counsel must return this copy of the ROT and corrected pages to the SJA of the command taking action not later than the time to submit the RCM 1106(f)(4) response to the SJA.

12.8. Accused's Copy. Give each person tried by court-martial a copy of the ROT, except any classified materials, controlled test materials, sealed materials, or sexually explicit materials (See paragraph 4.5.). Indicate disposition of the accused's copy of the ROT in the original. Accomplish this in "Copies of Record" section of Figure 4.2.

12.9. Prisoners. Ensure that prisoners receive their copy of the ROT. SJAs should advise security police to establish procedures to counsel prisoners on the importance of the ROT and its retention. Transfer the ROT with prisoners as personal property.

12.10. Delivery Impossible. If a copy of the record cannot be delivered to the accused, give it to the defense counsel or forward it with the original record with an explanation of the reason for non-delivery. RCM 1104(b).

Figure 12.1. Suggested Format for Authentication of Record of Trial, including Trial Counsel's Certificate of Review and Defense Counsel's Examination of Record

AUTHENTICATION OF THE RECORD OF TRIAL

in the case of

United States v. _____

(Insert Accused's Rank and Name)

TRIAL COUNSEL'S CERTIFICATE OF REVIEW

In accordance with RCM 1103 (i)(1)(A), MCM (1998), I reviewed the Record of Trial in the above-referenced case and determine it to be accurate and complete.

DATE

Trial Counsel

DEFENSE COUNSEL'S EXAMINATION OF RECORD

I examined the Record of Trial in the above styled case in accordance with RCM 1103(i)(1)(B).

DATE

Defense Counsel

NOTE: If defense counsel was not given the opportunity to examine the record before authentication, the reasons shall be attached to the record. See RCM 1103(i) (1)(B) and Appendix 14.

AUTHENTICATION OF RECORD

I examined the Record of Trial in the above-referenced case and find that it accurately reports the proceedings. I authenticate the Record of Trial in accordance with RCM 1104.

DATE

Military Judge

Chapter 13

FORWARDING RECORDS OF TRIAL

13.1. Cases Reviewed Under Article 66, UCMJ. Forward the original ROT and two copies to AFLSA/JAJM. Article 66, UCMJ review is required for cases in which the sentence, as approved, extends to death, dismissal of a commissioned officer (or cadet), dishonorable or bad conduct discharge, or confinement for one year or more, and, except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn.

13.2. Cases Where Appellate Review is Waived or Withdrawn. Forward the original ROT only.

13.3. Cases Reviewed Under Article 69, UCMJ. Send only the original ROT to AFLSA/JAJM for the Article 69, UCMJ examination. An Article 69, UCMJ examination is required for each general court-martial that is not otherwise reviewed under Article 66 if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review. The convening authority's staff judge advocate retains one copy of the ROT at least until notified that post-trial examination is completed and the proceedings are final under Article 76, UCMJ. If TJAG directs review of the case by the Air Force Court of Criminal Appeals, AFLSA/JAJM will request two additional copies from the convening authority.

13.4. Remands. If the original ROT is reviewed under Article 66 or 67, UCMJ, and is returned to a convening authority for a new action, always return the original ROT, the original and two copies of the new action, 10 copies of the new promulgating order, and two copies of the new SJA's Recommendation, if applicable, to AFLSA/JAJM.

13.5. SPCMs with BCD Not Approved by the Convening Authority. Forward the original ROT to AFLSA/JAJM after the GCM SJA completes the Article 64, UCMJ review.

13.6. Method of Forwarding ROTs. Send ROTs by a means that ensures some way of tracking the ROT if lost. Forwarding ROTs to AFLSA/JAJM by overnight mail is rarely necessary.

13.7. Disposition. Refer to AFMAN 37-139 for ROT disposition instructions.

Chapter 14

RETURN OF EXHIBITS TO RIGHTFUL OWNERS

14.1. Generally. Normally, property involved in courts-martial cannot be returned until after appellate review. Return all property involved in courts-martial or investigations to the owners as soon as possible, unless ownership is contested or the evidence is contraband. An owner, including the accused, does not lose ownership or right to possession of property used as evidence in a court-martial. If feasible, considering the potential for rehearings, make copies, descriptions, or photographs of the evidence for the ROT and return the property to the owners. If property that is made part of the ROT cannot be returned to the owner before completion of appellate review, attach a letter to the ROT from the installation SJA, through the GCM SJA to AFLSA/JAJM, requesting the return of the property to the command concerned or directly to specified persons after the sentence becomes final. As used in this paragraph, "contraband" means any property clearly made subject to confiscation or forfeiture by a U.S. statute or a State or foreign law.

14.2. Conflicting Claims. Courts-martial cannot adjudicate title to property. Where more than one person claims the property, the SJA should attempt to resolve the matter among the claimants. If the claimants cannot agree, dispose of the property according to the ruling of the appropriate civil court. Aside from acting as temporary custodian of the property, tell the claimants of the Air Force's position in the matter and suggest they seek a remedy in civil court.

Chapter 15

PREPARING AND ASSEMBLING ARTICLE 32 REPORTS

15.1. Appointment of Article 32 Investigating Officer (IO). The appointment of the Article 32 IO is done as a separate letter. Letterhead may be used. The appointment letter is never marked as an exhibit to the IO's report.

15.2. Report. Use DD Form 457, Investigating Officer's Report, to prepare the report. Use additional sheets of plain bond paper to complete the report if necessary. The IO's report is the first indorsement to the IO's appointment letter. See AFI 51-201, para 4.1.4.

15.3. Exhibits. Include a list of exhibits in the report but do not mark the exhibits list as an IO Exhibit.

15.3.1. A copy of the DD Form 458, Charge Sheet, is always IO Exhibit Number 1. Never mark the original charge sheet as an IO exhibit.

15.3.2. Each page of an IO exhibit should be numbered for the ease of reviewing the report. i.e. the first page of IO Exhibit Number 5 should be numbered "IO Ex No. 5, page 1 of ____" and the second page should be numbered "IO Ex No. 5 page 2 of ____" and so forth throughout the document. If the document is printed on the front and backside of the page, number each side as a separate page.

15.3.3. A stamp should be available to the IO for the purpose of marking exhibits. The stamp should read "IO. Ex No. ____." Exhibits should be marked in the bottom right corner of the page if possible. If there is not room, follow the same procedures for IO exhibits as are required for exhibits contained in the ROT when insufficient space at the bottom right corner for marking exists. Refer to paragraph 1.10.5.

Chapter 16

DUTIES AND RESPONSIBILITIES OF THE COURT REPORTER

16.1. Generally. The primary duty of the court reporter is to record verbatim all sessions of any proceeding to which detailed, accurately transcribe and assemble court-martial records, Article 32 Investigations, “DuBay” hearings, contingency confinement hearings, proceedings in revision, courts of inquiry, and other proceedings as required. Court reporters will be used in all GCMs and SPCMs.

16.2. Neutrality of Court Reporter. The court reporter is to remain neutral in any proceedings to which detailed. The court reporter must refrain from expressing personal opinions about the case before, during, or after trial. Counsel should provide court reporters a list of witnesses and a list of exhibits before trial. Court reporters must not share information received from one party with the other party in any proceeding to which the reporter is detailed. This includes witness lists and exhibit lists provided to the reporter in advance of trial to assist in the reporter’s preparation.

16.3. Court Reporter Recesses. The court reporter should inform the military judge if feeling ill or fatigued so either a recess or a replacement court reporter, as appropriate, may be arranged.

16.4. Interruption of Proceedings. When anything interferes with the court reporter’s ability to record the proceedings verbatim, the reporter must bring this to the attention of the military judge immediately. This includes the inability to hear the person who is speaking, or equipment malfunction. The court reporter must check the equipment periodically to ensure it is functioning properly.

16.5. Court Reporter Tapes. Court reporters should label tapes used to record the proceedings with the accused’s last name, type of proceeding, and date. Number the tapes for each proceeding starting at 1. Tapes should be labeled and numbered in advance of trial. For example: “Smith - 1 - GCM - 14 Aug 98.” Back-up tapes should be labeled as follows: “Smith - 1 B/U - GCM - 14 Aug 98.” If more than one reporter is detailed to a case, the reporter should initial the tapes he/she uses.

16.6. Exhibits. Court reporters should ensure that they have all of the exhibits at the close of trial.

16.7. Court Reporter Checklist. Court reporters should use a checklist to ensure all tasks are completed. Figure 16.1 is a sample checklist. Court reporters should also maintain a log of all proceedings to which the court reporter is detailed.

16.8. Methods of Reporting. Court reporters are authorized to use stenomask (closed microphone), stenomask with computer aided transcription, stenotype (machine shorthand), stenotype with computer aided transcription, conventional shorthand, and open microphone to record any proceeding to which they are detailed.

16.8.1. Special Rules for Open Microphone Reporting. Court reporters reporting proceedings using the open microphone method of reporting must adhere to the following procedures in addition to the requirements included elsewhere in this manual.

16.8.1.1. Monitor the recording at all times by using the headset to ensure the recorder is recording the proceeding verbatim. If there is noise that prevents the reporter from hearing what is on

the tape or a person is not speaking loudly enough for the recorder to pick up what is being said, interrupt the proceedings to inform the military judge of the problem immediately. This will ensure that a recording is made of everything being said.

16.8.1.2. Make sure the equipment is properly set up to record by open microphone. Set the recorder counter to 0 at the beginning of the proceeding and each time the tape is changed. Label the tapes as described in paragraph 16.5.

16.8.1.3. Take detailed notes of what transpires during the course of the trial, and for each item noted, record the counter number and tape number for easy accessibility later. This will aid the court reporter if asked to play back some part of the proceedings. If the reporter plays back a portion of a tape, be sure to advance the tape back to where the reporter stopped and do not record over any part of the proceedings. Make a note of any gestures made by counsel or a witness whether or not described on the record. Also note case cites and terms with which the reporter is not familiar with to check the spelling at a recess. Note the following list of items and it is not all inclusive.

The opening and closing times of all open sessions, all Article 39 (a) sessions, recesses, closing and opening for deliberations, and adjournment;

The detailing of counsel and counsel qualifications;

The detailing of the military judge;

Rights to counsel explained to the accused;

Nature of the charges;

Opportunity to challenge military judge;

Explanation of choice of forum to accused;

Arraignment;

Motions;

Pleas;

Explanation of guilty plea;

Maximum punishment authorized;

Elements of the offense;

Care inquiry;

Pretrial agreement, if any;

Announcement of findings;

Members called;

Swearing in of court members;

Assembly of court-martial;

Preliminary instructions to members;

Voir dire, en banc and individual;

Challenges;

Members informed of accused's pleas;

Distribution of charges to the members;

Opening statements;

The calling of each witness and direct and cross-examination, any objections and rulings, and excusal of each witness;

Any documentary or physical evidence introduced, objections, rulings, and place where admitted or rejected;

Resting of case by either side, rebuttal, and surrebuttal;

Rights in extenuation, mitigation, and right to make a statement;

Arguments on findings/sentence;

Instructions on findings/sentence;

Announcement of findings/sentence;

Personal data on accused introduced;

Sentence limitations contained in pretrial agreement;

Post-trial and appellate rights advisement; and

Adjournment.

16.8.1.4. Keep track of how much time is left on the tape. Change tapes during recesses if the tape is almost used up. If necessary, interrupt the proceedings to change the tape.

16.9. Time Goals. The time required to transcribe a record varies depending on a number of factors, such as the complexity of the case, the effectiveness of the court reporter's equipment, the quality of the court reporter's notes taken during trial, the court reporter's familiarity with the equipment and software, etc. As a general guideline, one hour of in-court proceedings should not take more than three hours to transcribe and in more complex cases not more than five hours to transcribe. In calculating in-court time include short recesses, deliberations, and other short delays. This goal is not an exact calculation but should be used as guideline of what SJAs can expect.

16.10. Safeguarding Tapes and Evidence. The court reporter must safeguard tapes and evidence during recesses and while preparing the record of trial. If a tape or evidence is lost, a verbatim transcript may not be able to be prepared. This may result in the convening authority not being able to approve all of an adjudged sentence. See RCM 1103(f). During recesses and overnight adjournments, court reporters should keep all transcription tapes and evidence provided to them in a locked drawer or cabinet when not under their direct observation. If a problem arises, notify the military judge, trial counsel, or SJA immediately. Follow these security measures while preparing the ROT and continue until receiving an authenticated ROT.

16.11. Retention of Trial Notes or Recordings: Retain all reporter's notes, worksheets, relevant materials, copies of audio and videotapes, and tape recordings of the original proceedings. Annotate the docu-

ments with the accused's name, date of trial and other pertinent data. Dispose of these items as directed by AFMAN 37-139.

16.12. Transcribing Other Proceedings Under the MCM. Court reporters may be detailed to transcribe depositions, Article 32 reports of investigation, "DuBay" hearings, contingency confinement hearings, and courts of inquiry. The following guidance is provided for these proceedings.

16.12.1. Depositions. Record and transcribe the deposition verbatim. Note the opening and closing times and dates, and the time and date of any recesses or adjournments. The format for transcribing depositions is found in AFI 51-201, Figure 4.2. The witness need not sign the deposition. The deposition officer authenticates the deposition and the court reporter certifies it. See RCM 702 (f). Refer to AFI 51-201, Figure 4.3, for the format for the authentication and court reporter's certificate. Depositions may be recorded on audiotape or videotape. See RCM 702 (g)(3). Depositions taken on written interrogatories are recorded and authenticated in the manner provided by DD Form 456, Interrogatories and Depositions. Mark deposition exhibits in the lower right corner of the exhibit as Deposition Exhibit 1, 2, etc.

16.12.2. Article 32 Reports of Investigation. Court reporters may be detailed to take testimony in Article 32 pretrial investigations. Normally such testimony is summarized. AFI 51-201, paragraph 4.1.3 sets out the requirements for when verbatim testimony may be taken. The IO is responsible for the content of the summarized testimony of each witness. Whenever possible the witness should sign the summarized testimony. Refer to Figure 16.2 for a suggested format for summarized Article 32 testimony.

16.12.3. DuBay Hearings. "DuBay" hearings are post-trial sessions ordered by an appellate court to find facts to assist the reviewer of the case. These proceedings are recorded verbatim unless otherwise directed. Use the same format as used for courts-martial. Number hearing exhibits numerically beginning with Hearing Exhibit 1. Authenticate the transcript in the same manner as the ROT. If documents are removed from the ROT and used in the hearing, place a blank sheet of paper in the ROT where the document was located and annotate where the document is now located. See AFI 51-201, paragraph 11.14, for additional requirements.

16.12.4. Contingency Confinement Hearings. AFI 51-201, paragraph 9.9, sets forth the procedures for hearings to impose confinement adjudged for failing to pay a fine. The proceedings may be summarized unless the convening authority directs a verbatim transcript. Transcribe the military judge's statement of evidence and findings verbatim if done on the record. If the military judge does a written statement of evidence and findings, attach this to the record as a hearing exhibit. The format for the transcript is the same as for courts-martial. Number exhibits numerically beginning with Hearing Exhibit 1. Prepare a cover page similar to the front cover of the DD Form 490 and an index of testimony and exhibits. Prepare an authentication sheet for the military judge similar to the authentication sheet used in ROTs, substituting "Contingency Confinement Hearing" for "Record of Trial."

16.12.5. Courts of Inquiry. AFI 51-201, paragraph 4.2, Article 135, UCMJ, and RCM 703, set out the requirements for courts of inquiry. The parties to a Court of Inquiry are the members (senior member is president), counsel for the court is the legal advisor, the "known party" is referred to as the respondent, his counsel is referred to as respondent's counsel, and the government representative is referred to as the recorder. The court reporter prepares a verbatim transcript of the proceedings, and the president of the court of inquiry and the counsel for the court authenticate it. Prepare a cover sheet which is similar to the DD Form 490 and include an index and list of exhibits. Number exhibits offered by

the recorder numerically beginning with Government Exhibit 1. Number exhibits offered by the respondent alphabetically beginning with Respondent's Exhibit A. Number Court exhibits with Roman numerals beginning with Court Exhibit I.

Figure 16.1. Checklist Items for Court Reporters.

CHECKLIST ITEMS FOR COURT REPORTERS

PRIOR TO TRIAL

- Ensure tape supply is adequate
- Run tapes through tape eraser
- Label tapes
- Exhibit stamps available
- Stapler, staple remover, paper clips, pencils, paper
- Set up equipment
- Test recording equipment
- Set up exhibit worksheet
- Obtain exhibit and witness lists from counsel

DURING TRIAL

- Record opening and closing times of sessions
- Check recording equipment following breaks to insure it is operating properly
- Keep accurate exhibit list
- Describe gestures (if not described by counsel)

POST-TRIAL

- Ensure you have all exhibits discussed during trial
- In a summarized record, ensure those portions required to be verbatim are transcribed verbatim
- Properly mark all exhibits to show page offered and page admitted/rejected.
- Ensure all copies of the ROT are legible and identical

Figure 16.2. Suggested Format for Summarized Article 32 Testimony.

SUMMARIZED TESTIMONY OF (NAME AND RANK OF WITNESS)

(Rank and full name of witness), (organization, base, and state), appeared at the investigation, was sworn, and testified substantially as follows:

(Summarize Testimony)

I declare under penalty of perjury that the foregoing is true and correct. Executed at _____ Air Force Base, _____, on _____.

(Full Name and Rank of witness)

I declare under penalty of perjury that the foregoing is a true and correct summary of the testimony given by the witness. Executed at _____ Air Force Base, _____, on _____.

(Name), (Rank), USAF
Investigating Officer

WILLIAM A. MOORMAN, Major General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Manual for Courts-Martial (MCM), United States, (1998 edition)
Air Force Policy Directive 31-4, *Information Security*, September 1, 1998
Air Force Instruction 31-401, *Information Security Program Management*, January 1, 1999
Air Force Instruction 36-2605, *Air Force Military Personnel Testing System*, June 17, 1994
Air Force Manual 37-139, *Records Disposition Schedule*, March 1, 1996
Air Force Policy Directive 51-2, *Administration of Military Justice*, September 7, 1993
Air Force Instruction 51-201, *Administration of Military Justice*, October 3, 1997

Abbreviations and Acronyms

ACC—Accused
ADC—Assistant Defense Counsel
ATC—Assistant Trial Counsel (If there are two or more assistant trial counsel, use ATC1
CIV DC—Civilian Defense Counsel
DC—Defense Counsel
DO—Deposition Officer
IMDC—Individual Military Defense Counsel
INT—Interpreter
IO—Investigating Officer
LA—Legal Advisor
MBR (Name)—Member
MJ—Military Judge
PRES—President
RC—Respondent's Counsel
REC—Recorder
REP—Court Reporter
RESP—Respondent
ROT—Record of Trial
TC—Trial Counsel
and ATC2, etc.)

WIT—Witness

Terms

Allied Papers—Other documents filed with the ROT dealing with the administration of the court-martial.

Article 32 Report—The completed DD Form 457, Investigating Officer's Report, with all of the items required in RCM 405 and this manual.

Record of Trial—The transcribed verbatim or summarized report of a court-martial and the items required in RCM 1103(b)(2)(D) and this manual.

Attachment 2**SAMPLE SUMMARIZED REPORT OF THE PROCEEDINGS****PROCEEDINGS OF A GENERAL COURT-MARTIAL**

The military judge called the Article 39(a) Session to order. The court met at Bolling Air Force Base, District of Columbia, at 0840 hours, 21 July 1998, pursuant to the following orders:

(INSERT CONVENING ORDERS AFTER THIS PAGE.)

[The convening order(s), Special Order _____, dated _____, and Special Order _____, dated _____, are numbered as pages 1.1 and 1.2. The USAF Trial Judiciary, _____ Circuit (AFLSA), memorandum dated _____ detailing the Military Judge is numbered as page 1.3.]

PERSONS PRESENT

(List the names, ranks and position of Military Judge, Trial Counsel, Defense Counsel, Accused, Court Reporter, and others who are detailed to the court and are present, in bold print.)

PERSONS ABSENT

Members named in the convening orders.

The trial counsel stated that the court-martial had been properly convened and that the convening orders were correct.

The trial counsel announced that he had been detailed to the court-martial by (Name, rank, position, organization, and base of detailing authority); and that he had been qualified and certified under Article 27(b) and sworn under Article 42(a), respectively, of the Uniform Code of Military Justice; and that he had not acted in any disqualifying capacity.

The defense counsel announced that he had been detailed to the court-martial by (name, rank, position, organization, and base of detailing authority); that he had been qualified and certified under Article 27(b) and sworn under Article 42(a), respectively, of the Uniform Code of Military Justice; and that he had not acted in any disqualifying capacity.

The military judge informed the accused of his rights concerning counsel as set forth in Article 38(b) and RCM 901(d). The accused responded that he understood his rights and that he chose to be defended by (Name and rank of defense counsel) as his only defense counsel.

The military judge stated that she had been detailed to the court-martial by (Name, rank, position, organization, and base of detailing authority); that she had been certified and qualified under Articles 26(b) and (c) and previously sworn in accordance with Article 42(a), respectively, of the Uniform Code of Military Justice. The military judge had not acted in any manner which would tend to disqualify her from this case.

The trial counsel announced that the general nature of the charge was one specification of rape, in violation of Article 120; that the charge was preferred by (Name of accuser) and forwarded with recommendations as to disposition by (Name and rank of person(s) forwarding charges) and investigated by (Name of Investigating Officer).

The military judge was not challenged for cause.

The military judge stated that at an earlier RCM 802 Conference, attended by all counsel and the military judge, the military judge was advised of the anticipated pleas, motions and composition of the court.

The accused was then advised of his right to a trial with a court-martial composed of members and his right to request trial by judge alone; the differences between a trial by judge alone and a court-martial with members; that a court-martial with members could, at the accused's written request, have one-third enlisted membership. The accused stated that he understood and requested trial by a court with members. The military judge ascertained that there was not a request for enlisted persons on the court. The accused waived the reading of the charge and was arraigned on the following charge and specification:

(INSERT CHARGE SHEET AFTER THIS PAGE.)

[The charge sheet is numbered as pages 3.1 and 3.2.]

(IF THERE ARE MOTIONS, SUMMARIZE THE MOTIONS AND DEFENSE COUNSEL'S POSITION. WHEN TRIAL COUNSEL STATES GOVERNMENT'S POSITION, YOU NEED ONLY MAKE A STATEMENT TO THE EFFECT THAT THE TRIAL COUNSEL STATED THE GOVERNMENT'S POSITION AND CITED SUCH AND SUCH A CASE. IF DEFENSE COUNSEL HAS A FURTHER POSITION, MERELY STATE THAT THE DEFENSE COUNSEL FURTHER STATED THEIR POSITION AND INCLUDE ANY ADDITIONAL CASE CITATIONS.)

There were no further motions.

PLEAS

DC: Your Honor, (Name and rank of accused) pleads: to the Specification and the Charge: Not Guilty.

Appellate Exhibit I, a copy of the charge and specification, was marked and submitted.

[The Article 39(a) Session adjourned at 0948 hours, 21 July 1998.]

END OF ARTICLE 39(A) SESSION

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS)

PROCEEDINGS OF THE COURT

[The court was called to order at 0949 hours, 21 July 1998.]

The Military judge and all parties previously present were again present. The following members were also present:

(List, in bold print, the court members in order by rank starting with the senior most member.)

The convening orders were amended to reflect the following changes: (Note the changes that were made.)

The military judge instructed the members concerning their duties, the conduct of the proceedings, the fact that the accused had earlier pled not guilty of the charge and specification, matters regarding challenges and voir dire examinations, duties of counsel for both sides, and conduct during recesses or adjournments.

The members of the court-martial were sworn in accordance with RCM 807.

The military judge announced that the court-martial was assembled.

Appellate Exhibit I was published to the members of the court.

The trial counsel announced the general nature of the charge.

Voir dire examination was conducted of all members of the court-martial.

[The court recessed at 1028 hours, 21 July 1998.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS)

ARTICLE 39(A) SESSION

[The Article 39(a) Session commenced at 1029 hours, 21 July 1998, attended by the military judge, counsel for both sides, accused, and the reporter.]

Individual voir dire examination was conducted on (all/___) members of the court.

(Name and rank of member), member, was questioned and stated under oath as follows:

I know (Names and ranks of persons) as casual acquaintances.... (Note: When a member is challenged for cause and the challenge is denied by the military judge, summarize the challenged member's statements concerning the matter in question. See Appendix 13, MCM).

The prosecution had no challenges for cause.

The defense challenged (Name and rank of member) for cause on the basis that she had sat on the Company Grade Officer Board this past quarter and (Name and rank) was selected. She had sought legal advice. She had experience with Flexeril up to the present time. Her husband worked the rape hot line; and he discussed his rape hot line counseling with her. She had a medical background and was familiar with the effect of Flexeril on people.

The defense counsel challenged (Name and rank of member) for cause on the basis that he lived on the same street as (Name and rank of person); he knew both counsel; and his wife

worked on the crisis hot line. Although not Flexeril, he indicated he had taken muscle relaxers as well.

After the prosecution stated the Government's position in opposition to the challenges, the challenge against (Name and rank of member) was granted. The challenge for cause against (Name and rank of member) was denied. (Again, refer to MCM, Appendix 13, MCM.)

The prosecution peremptorily challenged (Name and rank of member). The defense counsel stated that the defense had originally intended to peremptorily challenge (Name and rank of member), but based on the court's ruling would peremptorily challenge (Name and rank of member).

[The Article 39(a) Session adjourned at 1113 hours, 21 July 1998.]

END OF ARTICLE 39(A) SESSION

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court was called to order at 1129 hours, 21 July 1998, with all parties present, including the court members.]

The challenged members, (Names and ranks of members), were excused with the thanks of the court, and they left the courtroom.

The military judge further instructed the members concerning their duties, the conduct of the proceedings, their conduct during recesses or adjournments and instructed them with regard to the elements of the offense.

The trial counsel made an opening statement.

The defense counsel made an opening statement.

(NAME AND RANK/TITLE OF WITNESS)

was called as a witness for the prosecution, was sworn and testified substantially as follows:

DIRECT EXAMINATION

(Summarize testimony and any objections made to testimony)

CROSS-EXAMINATION

(Summarize testimony)

REDIRECT EXAMINATION

(Summarize testimony)

RECROSS-EXAMINATION

(Summarize testimony)

Appellate Exhibit II, court member question, was marked, examined by both sides and provided to the military judge.

EXAMINATION BY THE COURT

(Summarize testimony)

(The witness, after being instructed not to discuss his testimony, was excused and left the courtroom subject to recall.)

Prosecution Exhibits 1-5 for Identification were offered and received into evidence without objection.

The prosecution rested.

Defense Exhibits A-C for Identification were offered and received into evidence without objection.

(NAME AND RANK/TITLE OF WITNESS)

was called as a witness for the defense, was sworn and testified as follows:

DIRECT EXAMINATION

(Summarize testimony)

CROSS-EXAMINATION

(Summarize testimony)

Appellate Exhibit III, court member question, was marked, examined by both sides and provided to the military judge.

EXAMINATION BY THE COURT

(Summarize testimony)

(The witness, after being instructed not to discuss his testimony, was excused and left the courtroom subject to recall.)

The defense rested.

The prosecution presented no matters in rebuttal.

[The court-martial recessed at 1441 hours, 21 July 1998.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

ARTICLE 39(A) SESSION

[The Article 39(a) Session was called to order at 1442 hours, 21 July 1998, attended by the military judge, counsel for both sides, accused, and the reporter.]

Appellate Exhibit IV, Findings Worksheet, was marked and submitted.

A discussion was held between the military judge and counsel, in the presence of the accused, with respect to proposed instructions on findings to be given to the members of the

court-martial. The military judge proposed to give instructions on the following: (Summarize proposed instructions to be given.)

[The Article 39(a) Session adjourned at 1500 hours, 21 July 1998.]

END OF ARTICLE 39(A) SESSION

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court-martial was called to order at 1501 hours, 21 July 1998, with all parties present, including the court members.]

The trial counsel made an argument on findings.

The defense counsel made an argument on findings.

The trial counsel made rebuttal argument on findings.

The military judge instructed the members of the court-martial in accordance with RCM 920, including the elements of the offense, the presumption of innocence, reasonable doubt, and burden of proof as required by RCM 920(e), and on the procedures for voting on the findings worksheet.

Prosecution Exhibits 1-5, Defense Exhibits A-C, and Appellate Exhibit IV were published to the court members.

[The court-martial closed at 1600 hours, 21 July 1998.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court-martial reopened at 1800 hours, 21 July 1998, with all parties present who were present when the court-martial closed.]

The military judge examined the findings worksheet and determined it was in proper form.

FINDINGS

PRES: (Name and rank of accused), this court-martial finds you of the Specification and the Charge: Guilty.

The military judge cautioned the members of the court not to discuss the case with anyone nor amongst themselves during the overnight recess.

[The court-martial recessed for the evening at 1829 hours, 21 July 1998.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

ARTICLE 39(A) SESSION

[The Article 39(a) Session was called to order at 0830 hours, 22 July 1998, attended by the military judge, counsel for both sides, accused, and the reporter.]

The military judge advised the accused as to his rights with respect to extenuation and mitigation, including the right to make a sworn or unsworn statement, or to remain silent.

The military judge advised the accused of his post-trial and appellate rights in accordance with RCM 1010.

Appellate Exhibit V, Sentence Worksheet, was marked and submitted.

[The Article 39(a) Session adjourned at 0844 hours, 22 July 1998.]

END OF ARTICLE 39(A) SESSION

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court-martial was called to order at 0928 hours, 22 July 1998, with all parties present, including the court members.]

(INCLUDE HERE ANY MATTERS THAT MAY HAVE BEEN PRESENTED BY THE GOVERNMENT.)

The prosecution rested.

(INCLUDE HERE ANY MATTERS THAT MAY HAVE BEEN PRESENTED BY THE DEFENSE.)

The defense rested.

[The court-martial recessed at 0958 hours, 22 July 1998.]

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

ARTICLE 39(A) SESSION

[The Article 39(a) Session was called to order at 0959 hours, 22 July 1998, attended by the military judge, counsel for both sides, accused, and the reporter.]

A discussion was held between the military judge and counsel, in the presence of the accused, with respect to proposed instructions on sentence to be given to the members of the court-martial. The military judge proposed to give instructions on the following: (Summarize proposed instructions on sentencing.)

[The Article 39(a) Session adjourned at 1007 hours, 22 July 1998.]

END OF ARTICLE 39(A) SESSION

(NOTE: INSERT PAGE BREAK BETWEEN SESSIONS.)

[The court-martial was called to order at 1022 hours, 22 July 1998, with all parties present, including the court members.]

The trial counsel made argument on sentence.

The defense counsel made argument on sentence.

The trial counsel made rebuttal argument on sentence.

The military judge instructed the members of the court-martial that the maximum permissible punishment which could be adjudged for the offenses of which the accused had been found guilty was a dishonorable discharge, confinement for life, forfeiture of all pay and

allowances and reduction to the grade of E-1. The military judge also instructed the members concerning the procedures for voting, the responsibility of the members, the matters the members should consider, including the matters in extenuation and mitigation as well as aggravation, and further instructed with respect to the specific facts of the case in accordance with RCM 1005.

Appellate Exhibit V was provided to the president.

[The court-martial closed at 1135 hours, 22 July 1998.]

(NOTE: INSERT PAGE BREAK BETWEEN COURT SESSIONS.)

[The court-martial reopened at 1306 hours, 22 July 1998, with all parties to the trial present who were present when the court closed.]

The military judge examined the sentence worksheet and determined it was in proper form.

SENTENCE

**PRES: (Name and rank of accused), this court-martial sentences you
to be reduced to the grade of E-2 and to be confined for 45 days.**

[The court-martial adjourned at 1308 hours, 22 July 1998.]

Attachment 3

SAMPLE ABBREVIATED RECORD OF TRIAL (TRANSCRIPT)

RECORD OF TRIAL
of

(Name: Last, First, Middle Initial)

SSN

(Rank or Grade)

(Organization)

(Branch of Service)

(Station)

by

COURT-MARTIAL

Convened by

(Title of convening authority)_____
(Command of convening authority)

at

(Place of Trial)

on

(Date or Dates of Trial)

MASTER INDEX

Starting Page Number

Arraignment

Charge Sheet

Plea

Findings Announced

Adjournment

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of a copy of the record of trial in the case of United States v.

delivered to me at _____ on _____._____
(Signature of Accused)

PROCEEDINGS OF A (GENERAL) (SPECIAL) COURT-MARTIAL

The military judge called the Article 39(a) Session to order. The court met at Bolling Air Force Base, District of Columbia, at 0840 hours, 20 July 1998, pursuant to the following orders:

(INSERT CONVENING ORDERS AFTER THIS PAGE.)

[The convening order(s), Special Order _____, dated _____, and Special Order _____, dated _____, are numbered as pages 1.1 and 1.2. The USAF Trial Judiciary, _____ Circuit (AFLSA), memorandum dated _____ detailing the Military Judge is numbered as page 1.3.]

PERSONS PRESENT

(List in bold print the names, ranks and position of Military Judge, Trial Counsel, Defense Counsel, Accused, Court Reporter, and others who are detailed to the court and are present.)

PERSONS ABSENT

Members named in the convening orders.

The accused was arraigned on 20 July 1998, pursuant to the following Charge and Specifications:

(INSERT CHARGE SHEET AFTER THIS PAGE.)

[The Charge Sheet is numbered as Pages 2.1 and 2.2.]

The accused pled as follows:

To the Charge and Specification: Not Guilty.

The findings were announced on 20 July 1998, as follows:

**PRES: (Accused's name and rank), this court-martial finds you:
Of the Specification and the Charge: Not Guilty.**

[The court-martial adjourned at 1700 hours, 20 July 1998.]

Attachment 4

SAMPLE EXTRACTS FOR VERBATIM TRANSCRIPTS

THE FOLLOWING DEPICTS AN INITIAL ARTICLE 39(a) SESSION:

MJ: This Article 39(a) session will come to order.

ATC: Your honor, this court-martial is convened by Special Order AC-32, Headquarters, 11th Air Base Wing, Bolling Air Force Base, District of Columbia, dated 5 June 1998, copies of which have been furnished to the military judge, counsel and the accused; and which will be inserted at this point in the record.

The charges have been properly referred to this court for trial and were served on the accused on 20 July 1998. The prosecution is ready to proceed in the case of United States v.

Staff Sergeant John Smith.

The accused and the following persons detailed to this court are present: **Colonel Edward Black**, military judge; **Captain Mary Green**, and **First Lieutenant Adam Brown**, trial counsel; and **Captain Frederick White**, defense counsel. The members are absent.

Jennifer Jones has been detailed court reporter and has previously been sworn.

The members of the prosecution have been detailed to this court-martial by Colonel James Johnson, Staff Judge Advocate, 11th Air Base Wing. All members of the prosecution are qualified and certified under Article 27(b) and sworn under Article 42(a), Uniform Code of Military Justice. No member of the prosecution has acted in any manner that might tend to disqualify us in this court-martial.

MJ*: Staff Sergeant John Smith, you do have the right to be represented by Captain White, your detailed military defense counsel. He is provided to you at no expense to you. If ...

***Note: Always insert a prefix to identify the speaker in the first new paragraph on a continuation page, even if it is a continuation of the same speaker from the previous page.**

THE FOLLOWING DEPICTS HOW TO TRANSCRIBE PLEAS AND ELEMENTS OF THE OFFENSE IN GUILTY PLEA CASES

MJ: Staff Sergeant John Smith, how do you plead? Before receiving your plea, I advise you that any motion to dismiss any charge or grant other relief should be made at this time. Your defense counsel will speak for you in making motions and in entering your pleas.

DC: Your Honor, the defense does not have any motions.

PLEAS

DC: To the Charge and Specification, Staff Sergeant Smith pleads: Guilty.

MJ: Please be seated.

[Accused and counsel resumed their seats.]

In the specification of the charge, you are charged with the offense of wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice.

The elements of this offense are:

First, that at or near Bolling Air Force Base, District of Columbia, between on or about 16 August 1997 and 24 August 1997, you used cocaine;

Second, that you actually knew you used the substance;

Third, that you actually knew that the substance you used was cocaine or of a contraband nature; and

Fourth, that the use by you was wrongful.

MJ: In addition to those four elements, there are a number of definitions that I need to provide you. Use means the administration, ingestion or physical assimilation of a drug into one's body or system. Use includes such acts as smoking, sniffing, eating, drinking or injecting. To be punishable under Article 112a, use of a controlled substance must be wrongful. Thus use of a controlled substance is wrongful if it is without legal justification or authorization.

I will give you some examples of when use of a controlled substance would not be wrongful. It is not wrongful if such act is done pursuant to legitimate law enforcement activities. For example, an informant who is forced to use drugs as part of an undercover operation to keep from being discovered is not guilty of wrongful use. And it is not wrongful if done by ...

**THE FOLLOWING DEPICTS HOW TO TRANSCRIBE WITNESS TESTIMONY
USING "Q" AND "A" FORMAT**

MJ: Government, do you have any witnesses?

TC: Yes, Your Honor. We call Technical Sergeant William Jones.

TECHNICAL SERGEANT WILLIAM JONES

was called as a witness by the government, sworn, and testified as follows.

DIRECT EXAMINATION

Questions by the Trial Counsel:

Q. Tech Sergeant Jones, would you please tell the military judge what your name, rank, duty position, and your place of work is?

A. I am Technical Sergeant William Jones. I am a Security Forces officer assigned to the 11th Security Forces Squadron at Bolling Air Force Base.

Q. How long have you been in the Air Force, Sergeant Jones?

A. A little over 18 years.

Q. Do you know the accused, Staff Sergeant John Smith?

A. Yes, I do, in my official capacity.

THE FOLLOWING DEPICTS HOW TO TRANSCRIBE FINDINGS:

MJ: Would the accused and counsel please rise.

[Accused and counsel complied.]

FINDINGS

MJ: Staff Sergeant John Smith, in Accordance with your plea of guilty, this Court finds you: Of the Charge and Specification: Guilty.

MJ: You may be seated.

[Accused and counsel resumed their seats.]

Staff Sergeant Smith, we are now entering the sentencing portion of this trial where you do have the right to present matters in extenuation and mitigation, that is, matters about the offense or yourself which you want me to consider in deciding upon your sentence. ...

**THE FOLLOWING DEPICTS HOW TO TRANSCRIBE SESSIONS OF COURT BY
INSERTING PAGE BREAKS AND HOW TO TRANSCRIBE ANNOUNCEMENT OF
THE SENTENCE**

MJ: Court will be closed.

[The court closed at 1013 hours, 16 December 1998.]

[END OF PAGE]

(Note: INSERT PAGE BREAK BETWEEN SESSION)

[The court reopened at 1110 hours, 16 December 1998. All parties were once again
present.]

MJ: Please be seated. The court will come to order. All parties are present.

Accused and counsel please rise.

[Accused and counsel complied.]

SENTENCE

**MJ: Staff Sergeant John Smith, this court-martial sentences
you to be discharged from the service with a bad
conduct discharge; to be confined for 100 days; and to
be reduced to the grade of E-1.**

MJ: Please be seated.

[Accused and counsel resumed their seats.]